IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 3803 of 2003

Between:

Mr. ATA-UR-RAHMAN, S/o. Zia-ur-Rahman,
R/o. H.No.23-6-377, Rahman's Villa, Near Moghalpura PS,
Hyderabad - 500 065.

..... PETITIONER

AND

1. The Vice-Chairman, A.P. Housing Board,
   Gruha Kalpa, Opp: Gandhi Bhavan,
   Hyderabad - 500 001.
2. The Executive Engineer, North Division,
   A.P. Housing Board, Bharathnagar,
   Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction and more particularly one in the nature of *Writ of Mandamus* declaring the impugned Memo of the 1st Respondent in Memo No. Open Plot.7/GB/EM.9/EE(N)/03/838 dated 18-2-2003 as illegal, arbitrary, *mala fide*, against the Principles of Natural Justice and void; and consequently direct the Respondents to receive the balance sale consideration from the Petitioner and register Plot No.7 admeasuring 307.66 (307.66) square yards adjacent to House No.1/MIG at Gatchibowli, Hyderabad in favour of the Petitioner.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondents: MR.J.PRABHAKAR

The Court made the following:

ORDER:

This writ petition is filed by Ata-Ur-Rahman with a prayer to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned memo of the first respondent in Memo No. Open Plot.7/GB/EM.9/EE(N)/03/838, dated 18.2.2003 as illegal, arbitrary and *mala fide* and against the principles of natural justice.

2. The case of the petitioner is that certain open plots were put in auction by the A.P. Housing Board on 23.12.2002 at 11.30a.m., in the office of the Executive Engineer (Housing) North Division, Bharatnagar Colony, Hyderabad. The petitioner participated in the said auction and became the highest bidder having quoted the bid amount at Rs.2050/- per square yard in respect of plot No.7. On the same day, he deposited an amount of Rs.1,63,983/- being 25% of the cost of the land and the same was acknowledged by the respondents. In the meanwhile, the Vice Chairman, A.P. Housing Board- first respondent issued memo vide Memo No. Open Plot.7/GB/EM9/EE(N)/03/838, dated 18.02.2003 cancelling the public auction conducted on 23.12.2002 and directing the petitioner to take back his advance of Rs.1,63,983/-. Assailing the said memo, the petitioner filed the present writ petition.

3. The main grievance of the petitioner is that he being the highest bidder in the auction is entitled for allotment of Plot No.7.

4. The respondents filed their counter affidavit and one E. Vijayan has sworn to the counter affidavit. It is stated in the counter affidavit that the bid knocked down in favour of the auction purchaser is subject cto the confirmation of the bid by the Vice Chairman and Housing Commissioner. The Vice Chairman exercised his power and refused to confirm the auction and thus the memo came to be issued to the petitioner to take back the amount of Rs.1,63,983/-.

5 . Heard the learned counsel for the petitioner and the standing counsel

appearing on behalf of the respondents.

6 . It is not in dispute that the auction held on 23.12.2002 is subject to confirmation by the Vice Chairman and Housing Commissioner. It is stated in the auction notice itself that the auction is subject to the terms and conditions of the auction. The Vice Chairman refused to confirm the auction in exercise of the powers conferred on him in the terms and conditions of the auction. This fact is evident in para-5 of the counter affidavit and thus:

> "As regards the contentions raised in para-3 of the affidavit it is true that the petitioner has submitted the auction form for plot admeasuring 307.66 sq.yds. bearing No.7 adjacent to H.No.1/MIG situated at Gatchibowli and also deposited a sum of Rs.50,000/- towards EMD on 23.12.2002. It is submitted that in the auction the petitioner offered the subject plot at Rs.2,050/- only per square yard against the upset priced fixed at Rs.2,000/- as the petitioner was only one participant as there is no other participants. It is true that the petitioner deposited 25% (1/4th) cost of the land and 1% auction expenses inclusive of the EMD on 23.12.2002. In this context, it is just and necessary to mention that it is made clear in the auction notice that the bid knocked down in favour of the auction purchaser is subject to confirmation of the bid by the Vice Chairman and Housing Commissioner. It is not correct to state that the petitioner was waiting for formal confirmation of the sale and was ready and willing having sufficient funds to pay the balance of the sale consideration."

7. Since the Vice Chairman, A.P. Housing Board-first respondent has exercised discretionary power conferred on him under the terms and conditions of the auction, his action cannot be found fault with and thus, the writ petition is devoid of merits and the same is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. However, it is made clear that the petitioner is entitled to take back the amount of Rs.1,63,983/- already deposited by him and so also Earnest Money Deposit, if not already paid to him by the respondents. No order as to costs.

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(B. SESHASAYANA REDDY, J)

Date: 22.06.2005

Note: Issue C.C. in one week.

B.O.

Ksn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Vice-Chairman, A.P. Housing Board,
   Gruha Kalpa, Opp: Gandhi Bhavan,
   Hyderabad - 500 001.
2. The Executive Engineer, North Division,
   A.P. Housing Board, Bharathnagar,
   Hyderabad.

3. 2 CD copies

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